



1 claims. Dkt. #111. For the reasons set forth below, this Court agrees with Plaintiffs, GRANTS  
2 their motion for summary judgment and denies Defendants' motion for summary judgment.

## 3 II. BACKGROUND

4 This Employee Retirement Income Security Act ("ERISA") (29 U.S.C.S. § 1001 *et*  
5 *seq.*) matter arises from Defendants' alleged failure to pay certain funds withheld from  
6 paychecks into required trust funds. Dkt. #64 at ¶¶ 4.1-4.12. Defendant Paramount Scaffold  
7 Inc. ("Paramount") is a now defunct entity, it having filed for Chapter 11 bankruptcy and sold  
8 all assets to Defendant California Access Scaffold, Inc. ("California Access"). *Id.* at ¶ 3.27 and  
9 Dkt. #75 at ¶ 3.18. Plaintiffs previously named two individual Defendants, who have since  
10 been dismissed for lack of personal jurisdiction. Dkt. #88. With respect to the former  
11 individual Defendants, Plaintiffs alleged that while acting in their official capacities at  
12 Paramount, they withdrew funds from employee paychecks that were to be paid to the Plaintiff  
13 Trust Funds on a monthly basis, but did not tender those funds to the Trusts, and instead used  
14 and converted the funds for other purposes. Dkt. #64 at ¶ 3.32.

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18 Paramount filed for Chapter 11 bankruptcy protection on December 16, 2011. Dkt.  
19 #108, Ex. 6. Paramount's principal office was 16525 S. Avalon Boulevard, Carson, Los  
20 Angeles County, California 90746. Dkt. #108, Ex. 1 at 6-7. Daniel Johnson was the President,  
21 CEO and a Director of Paramount. He and his wife Kathryn Johnson owned 92.63% of the  
22 company's common shares, 83.63% and 9.00%, respectively. Daniel Johnson and two family  
23 partnerships owned 66.62% of Paramount's Class A, non-convertible stock. Dkt. #108, Ex. 1  
24 at 14. Mr. Johnson's brother, James Johnson, owned 7.26% of Paramount's common shares.  
25 Dkt. #108, Ex. 1 at 13. James Johnson was a Vice President and Director of Paramount. James  
26 McCormick was CFO, and Eric Raymond was a Vice President. Dkt. #108, Ex. 1 at 161.  
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1 California Access was formed in or about March 2012 as a California limited liability  
2 company. Dkt. #109 at ¶ 2 and Ex. 1. Daniel Johnson is now the CEO of California Access.  
3 James Johnson is a Vice President and Director of California Access and an Executive  
4 Salesman. Dkt. #113, Ex. 15. Kevin Johnson was a Sales Associate and Project Manager at  
5 Paramount and is a family member of Daniel Johnson. Kevin Johnson holds the same positions  
6 with California Access. *Id.* Natalia “Natasha” Johnson was an Account Manager at Paramount  
7 and is a family member of Daniel Johnson. Ms. Johnson holds the same position with  
8 California Access. *Id.* Jason Lee was a payroll supervisor at Paramount and is a payroll  
9 manager at California Access. *Id.* Other employees that hold the same positions at California  
10 Access as they did at Paramount also include Aldo Lopez, Brad Giacoletto and Cynthia  
11 Bogarin. *Id.*

14 Defendants highlight the differences between the two companies as follows: Paramount  
15 was a unionized company; had more than 400 employees; owned 50-60 vehicles; held locations  
16 in Washington, Nevada, Louisiana, as well as Northern and Southern California; owned more  
17 than \$25 million worth of scaffolding equipment; had approximately 4,044 customers; engaged  
18 in union and maritime forming, or shipyard scaffolding jobs; and had an annual revenue of  
19 about \$22 million to \$44 million in the five years prior to its bankruptcy. Dkt. #110 at ¶ ¶ 4-7,  
20 9, 11, 14, 17 and 24. Paramount was a C corporation, controlled by two large private equity  
21 firms (OPE Paramount LLC and Stone Canyon Venture Partners) which owned 99.08% of the  
22 Class B controlling shares of Paramount. Dkt. #110 at ¶ ¶ 10, 20 and 21.

25 California Access has always been a non-union company, and leases only about 70  
26 individuals from a Professional Employer Organization (PEO) named Oasis Outsourcing. Dkt.  
27 #109 at ¶ 10. California Access owns 25 vehicles; has a single location in Southern California;  
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1 does not perform any work in Nevada, Washington, Louisiana, or any other state outside  
2 California; owns about \$7 to \$8 million worth of scaffolding equipment; has approximately  
3 1,500 customers – of which 594 have been Paramount’s customers in the past; does not engage  
4 in any union and maritime forming, or shipyard scaffolding jobs; and has had an annual  
5 revenue of about \$7 million for the past three fiscal years. Dkts. #109 at ¶¶ 5, 10, 11, 14, 15,  
6 16, 18, 19, 20 and 21 and #110 at ¶¶ 9, 11, 14, 17 and 24. California Access was formed as an  
7 LLC by twelve individual member investors who contributed 100 percent of the new cash  
8 equity necessary to (1) acquire the assets in the Paramount asset sale, and (2) capitalize  
9 California Access from the beginning of its scaffold operations in March 2012. Dkt. #109 at ¶  
10 25. Daniel Styles and Dan Johnson co-manage the day-to-day operations of California Access.  
11 Dkt. #109 at ¶ 23. Daniel Styles, who held no interest in connection with Paramount, is  
12 California Access’s second largest shareholder and has blocking rights in connection with any  
13 material decisions concerning the company. *Id.* at ¶ 24 and Dkt. #110 at ¶ 29.

14 The parties do not appear to dispute the foregoing facts. Rather, they dispute how those  
15 facts meet the elements of their legal arguments. Accordingly, the parties agree that this matter  
16 is appropriately resolved on summary judgment.

### 17 **III. DISCUSSION**

#### 18 **A. Summary Judgment Standard**

19 Summary judgment is appropriate where “the movant shows that there is no genuine  
20 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.  
21 R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). In ruling on  
22 summary judgment, a court does not weigh evidence to determine the truth of the matter, but  
23 “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d  
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1 547, 549 (9th Cir. 1994) (*citing Federal Deposit Ins. Corp. v. O'Melveny & Meyers*, 969 F.2d  
2 744, 747 (9th Cir. 1992)). Material facts are those which might affect the outcome of the suit  
3 under governing law. *Anderson*, 477 U.S. at 248.

4 The Court must draw all reasonable inferences in favor of the non-moving party. *See*  
5 *O'Melveny & Meyers*, 969 F.2d at 747, *rev'd on other grounds*, 512 U.S. 79 (1994). However,  
6 the nonmoving party must make a "sufficient showing on an essential element of her case with  
7 respect to which she has the burden of proof" to survive summary judgment. *Celotex Corp. v.*  
8 *Catrett*, 477 U.S. 317, 323 (1986). Further, "[t]he mere existence of a scintilla of evidence in  
9 support of the plaintiff's position will be insufficient; there must be evidence on which the jury  
10 could reasonably find for the plaintiff." *Anderson*, 477 U.S. at 251.

#### 11 12 13 **B. Defendants' Motion to Strike**

14 As an initial matter, the Court addresses Defendants' motion to strike Exhibit 16 to the  
15 Declaration of Jeffrey Maxwell in support of Plaintiffs' cross-motion for summary judgment.  
16 Dkt. #114 at 11-12. That exhibit is a video, at some point shown on YouTube, which appears  
17 to have been produced for a local Fox news network, entitled "Saving the California Dream."  
18 Dkt. #113, Ex. 16. The video segment is one of a multi-part series examining local California  
19 businesses and highlights California Access. *Id.* Defendants argue that the video is irrelevant  
20 and therefore inadmissible under Federal Rule of Evidence 401. Dkt. #114 at 11-12.  
21 Defendants also argue that the video is more prejudicial than probative and therefore  
22 inadmissible under Federal Rule of Evidence 403. *Id.* The Court disagrees.

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25 The video is relevant to the question of whether California Access is a successor of  
26 Paramount as further discussed below. The Court also rejects Defendants' argument that the  
27 video was offered to interject an inflammatory issue regarding the union. The Court has  
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1 viewed the video and does not find it inflammatory. In fact, there is every effort by both the  
2 reporters and those being interviewed (Mr. Daniel Johnson, Mr. Styles and their local  
3 bank/lender) to explain that California Access is not anti-union. Moreover, the Court is able to  
4 view the video impartially and without bias in the context of its analysis below. Accordingly,  
5 the Court DENIES Defendants' motion to strike.  
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### 7 **C. Effect of Bankruptcy and Successor Corporations**

8 The Court now turns to the parties' substantive arguments. Defendants first argue that  
9 Plaintiffs' claims should be dismissed because Plaintiffs are equitably estopped by their failure  
10 to object during Paramount's bankruptcy proceedings. Dkt. #107. Defendants argue that  
11 Plaintiffs had notice of the bankruptcy sale but failed to object to such sale. On March 28,  
12 2012, the bankruptcy court entered an order approving the sale of Paramount's assets to  
13 California Access "free and clear of any interest in such property." Dkt. #108, Ex. 6.  
14 Defendants argue that they relied on the fact that Plaintiffs did not object to the sale to their  
15 detriment. Dkt. #107 at 10-13. Defendants also argue that allowing Plaintiffs' claims to stand  
16 would have the effect of discouraging potential purchasers in bankruptcy sales, and would now  
17 prejudice Defendants who relied on the Plaintiffs' implicit approval of the sale. *Id.*  
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20 Plaintiffs respond that the order approving the bankruptcy sale is inapplicable because  
21 Plaintiffs have no interest in the assets that were sold. Dkt. #111 at 15-16. Plaintiffs note that  
22 their claims against Paramount are based on ERISA, for delinquent fringe benefit contributions,  
23 and those claims do not give them the right to lien, claim or encumber any of the assets covered  
24 by the bankruptcy order. *Id.* Further, Plaintiffs note that they are not one of the entities listed  
25 in the order, and are therefore not covered by it. *Id.* at 16. In addition, Plaintiffs assert that  
26 their claims against California Access arose post-bankruptcy after it became apparent that  
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1 California Access was operating as a successor corporation to Paramount. *Id.* at 18. For the  
2 reasons discussed below, the Court agrees with Plaintiffs.

3 The successorship doctrine provides an exception from the general rule that a purchaser  
4 of assets does not acquire a seller's liabilities. *See Resilient Floor Covering Pension Trust*  
5 *Fund Bd. of Trs. v. Michael's Floor Covering, Inc.*, 801 F.3d 1079, 1090 (9th Cir. 2015). Most  
6 states have adopted exceptions to the general no-liability rule that allow creditors to pursue the  
7 successor if the "sale" is merely a merger or some other type of corporate reorganization that  
8 leaves real ownership unchanged. Successor liability under federal common law is broader  
9 still: in order to protect federal rights or effectuate federal policies, this theory allows lawsuits  
10 against even a genuinely distinct purchaser of a business if (1) the successor had notice of the  
11 claim before the acquisition; and (2) there was substantial continuity in the operation of the  
12 business before and after the sale. *Id.* at 1090-91. Successor liability is an equitable doctrine,  
13 not an inflexible command, and "in light of the difficulty of the successorship question, the  
14 myriad factual circumstances and legal contexts in which it can arise, and the absence of  
15 congressional guidance as to its resolution, emphasis on the facts of each case as it arises is  
16 especially appropriate." *Howard Johnson Co., Inc. v. Detroit Local Joint Exec. Bd.*, 417 U.S.  
17 249, 256, 41 L. Ed. 2d 46, 94 S. Ct. 2236; see also *Steinbach v. Hubbard*, 51 F.3d 843, 846 (9th  
18 Cir. 1995).

19 In order to determine whether the doctrine applies, the Court must analyze whether  
20 California Access is a successor corporation to Paramount. "The primary question in [labor  
21 and employment] successorship cases is whether, under the totality of the circumstances, there  
22 is 'substantial continuity' between the old and new enterprise." *Haw. Carpenters Trust Funds*  
23 *v. Waiola Carpenter Shop, Inc.*, 823 F.2d 289, 294 (9th Cir. 1987); see also *New England*  
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1 *Mech., Inc. v. Laborers Local Union 294*, 909 F.2d 1339, 1342 (9th Cir. 1990); *Steinbach*, 51  
2 F.3d at 846. To address whether the new business is the successor of an old business, the Court  
3 considers the following factors, which are “not . . . exhaustive”:

4 [Whether] there has been a substantial continuity of the same business  
5 operations[;] [whether] the new employer uses the same plant; [whether] the  
6 same or substantially the same work force is employed; [whether] the same  
7 jobs exist under the same working conditions; [whether] the same  
8 supervisors are employed; [whether] the same machinery, equipment, and  
methods of production are used; and [whether] the same product is  
manufactured or the same service [is] offered.

9 *Jeffries Lithograph*, 752 F.2d at 463 (quoting *Premium Foods, Inc.*, 260 N.L.R.B. 708, 714  
10 (1982), *enforced* 709 F.2d 623 (9th Cir. 1983)) (last alteration in original); *see also Haw.*  
11 *Carpenters*, 823 F.2d at 294. Other cases have considered whether the body of customers is the  
12 same. *See, e.g., Fall River Dyeing*, 482 U.S. at 43; *Resilient Floor Covering Pension Trust*  
13 *Fund*, 801 F. 3d at 1090-91.

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15 As the Ninth Circuit Court of Appeals has explained:

16 “There is, and can be, no single definition of ‘successor’ which is applicable  
17 in every legal context. A new employer . . . may be a successor for some  
18 purposes and not for others.” *Howard Johnson Co. v. Detroit Local Joint*  
19 *Exec. Bd., Hotel & Rest. Emps. & Bartenders Int’l Union, AFL-CIO*, 417  
20 U.S. 249, 262 n. 9, 94 S. Ct. 2236, 41 L. Ed. 2d 46 (1974). “[D]ecisions on  
21 successorship must balance, *inter alia*, the national policies underlying the  
22 statute at issue and the interests of the affected parties,” *Sullivan*, 623 F.3d  
at 782 (quoting *Steinbach*, 51 F.3d at 846) (alteration in original). “Because  
the origins of successor liability are equitable, fairness is a prime  
consideration in its application.” *Id.* (Quoting *Criswell v. Delta Air Lines,*  
23 *Inc.*, 868 F.2d 1093, 1094 (9th Cir. 1989)). Thus, these decisions

24 require[] analysis of the interests of the new employer and the  
25 employees and of the policies of the labor laws in light of the facts  
26 of each case and the particular legal obligation which is at issue,  
whether it be the duty to recognize and bargain with the union, the  
duty to remedy unfair labor practices, the duty to arbitrate, etc.



1 *Id.* (quoting *Howard Johnson*, 417 U.S. at 262 n.9). The individual  
2 successorship factors outlined in *Jeffries* are, accordingly, given greater or  
lesser weight depending on the statutory context.

3 Moreover, “in light of . . . the myriad factual circumstances and legal  
4 contexts in which [the employment law successorship issue] can arise, and  
5 the absence of congressional guidance as to its resolution, emphasis on the  
6 facts of each case as it arises is especially appropriate.” *Howard Johnson*,  
7 417 U.S. at 256. Finally, as the successorship test is “more functional than  
formal,” “the absence of one . . . factor” does not compel a particular  
conclusion. *Hawaii Carpenters*, 823 F.2d at 293, 294.

8 Depending on the statutory context and the type of claim, certain factors  
9 may warrant greater or lesser emphasis.

10 *Resilient Floor Covering Pension Trust Fund*, 801 F.3d at 1091.

11 In the instant matter, looking at the totality of the circumstances, the Court agrees with  
12 Plaintiffs that California Access is a successor to Paramount. Of primary significance is that  
13 the management of California Access remains largely the same as it was at Paramount. Indeed,  
14 as noted above, Daniel Johnson is now the CEO of California Access Scaffold. James Johnson  
15 is a Vice President and Director of California Access Scaffold and an Executive Salesman.  
16 Dkt. #113, Ex. 15. Kevin Johnson was a Sales Associate and Project Manager at Paramount.  
17 Kevin Johnson holds the same positions with California Access Scaffold. *Id.* Natalia  
18 “Natasha” Johnson was an Account Manager at Paramount and holds the same position with  
19 California Access Scaffold. *Id.* Jason Lee was a payroll supervisor at Paramount and is a  
20 payroll manager at California Access. *Id.* Other employees that hold the same positions at  
21 California Access as they did at Paramount also include Aldo Lopez, Brad Giacoletto and  
22 Cynthia Bogarin. *Id.*

23 In addition, California Access Scaffold now uses Paramount’s Carson, California  
24 property as its corporate office, Dkt. #113, Ex. 14, and there appears to be significant cross-  
25 over in the services formerly offered by Paramount and now offered by California Access. *See*  
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1 Dkt. #113, Exs. 9 and 14. Further, corporate managers have made public statements supporting  
2 the contention that the bankruptcy and formation of California Scaffold was a designed  
3 corporate restructuring in order to create a nonunion company because potential investors  
4 found the union component of Paramount unattractive. *See* Dkt. #113, Ex. 16. Despite the  
5 differences in revenue and asset holdings, in this context, the Court finds that California Access  
6 is a successor to Paramount.  
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8 Although the Ninth Circuit Court of Appeals has not addressed this question directly,  
9 recent case law supports the Court's conclusion. In *Resilient Floor Covering Pension Trust*  
10 *Fund, supra*, the Court of Appeals examined whether a successor employer, both generally and  
11 in the construction industry in particular, can be subject to withdrawal liability under the  
12 Multiemployer Pension Plan Amendments Act ("MPPAA"). The Court analyzed the  
13 successorship doctrine, recognizing that:  
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15 The successorship doctrine extends to legal obligations arising under the  
16 National Labor Relations Act ("NLRA"), the Fair Labor Standards Act  
17 ("FLSA"), Title VII of the Civil Rights Act of 1964 ("Title VII"), and the  
18 Family and Medical Leave Act ("FMLA"), among others. *See, e.g., Fall*  
19 *River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 107 S. Ct. 2225, 96  
20 L. Ed. 2d 22 (1987) (NLRA); *Steinbach v. Hubbard*, 51 F.3d 843 (9th Cir.  
21 1995) (FLSA); *Bates v. Pac. Maritime Ass'n*, 744 F.2d 705 (9th Cir. 1984)  
(Title VII); *Sullivan v. Dollar Tree Stores, Inc.*, 623 F.3d 770, 780-81 (9th  
22 Cir. 2010) (recognizing regulations that incorporate common law  
23 successorship principles in defining successors-in-interest for purposes of  
24 FMLA liability).

25 *Resilient Floor Covering Pension Trust Fund*, 801 F.3d at 1090. The Court then emphasized  
26 that "[t]he successorship standards are flexible and must be tailored to the circumstances at  
27 hand." *Id.* at 1093. The circumstance of this case make clear to the Court this both Paramount  
28 and California Access were and are business entities held by the same family, and that  
California Access was simply restructured to address outstanding debt and move forward under

1 a model more attractive to investors with less risk related to union-related costs. *See* Dkt. #113,  
2 Ex. 16.

3 The Court also finds persuasive a Seventh Circuit case, *Chicago Truck Drivers, Helpers*  
4 *& Warehouse Workers Union (Indep.) Pension Fund v. Tasemkin, Inc.*, 59 F.3d 48 (7th Cir.  
5 1995). In *Tasemkin*, the Seventh Circuit Court of Appeals addressed nearly the identical  
6 question as the instant matter. The Court first recognized the successor relationship between  
7 the two business entities at issue in that case, highlighting the family ownership and  
8 involvement between the two:  
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10 This Circuit held just a few years ago that successor liability could lie in a  
11 case much like this one, where the predecessor had racked up unpaid  
12 pension fund contributions under ERISA. *See Upholsterers' International*  
13 *Union Pension Fund v. Artistic Furniture of Pontiac*, 920 F.2d 1323, 1327  
14 (7th Cir. 1990); *see also Central States Pension Fund v. Hayes*, 789 F.  
15 Supp. 1430, 1435-1436 (N.D. Ill. 1992) (relying on *Artistic Furniture*  
16 analysis in holding successor liable for predecessor's delinquent withdrawal  
17 liability under ERISA). Why, then, did the Fund lose this case on New  
18 Tasemkin's motion to dismiss? Certainly not because of the facts of the  
19 transfer: if, as we must at this point in the litigation, we accept the Fund's  
20 version of them, these facts suggest both notice and continuity. New  
21 Tasemkin was owned by the daughter-in-law of Old Tasemkin's owner,  
22 Irving Steinberg; Steinberg's son Leslie, formerly the registered agent for  
23 Old Tasemkin, was New Tasemkin's president and secretary; New  
24 Tasemkin operated the same business (albeit from fewer locations),  
employed largely the same staff, and relied primarily on the same suppliers.  
Leslie Steinberg's active role in both old and new companies may well  
satisfy the notice prong; New Tasemkin's assumption of Old Tasemkin's  
corporate identity makes a strong case for substantial continuity. *See G-K-*  
*G*, 39 F.3d at 748 (substantial continuity is "satisfied if no major changes  
are made in [the] operation"); *Steinbach*, 51 F.3d at 846 (continuity found  
to exist where successor firm kept same employees, operated out of same  
office, and provided same services).

25 *Tasemkin*, 59 F.3d at 49-50.

26 The court then discussed the District Court's reasons for rejecting the successorship  
27 doctrine, ultimately concluding that:  
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1 once a bankruptcy proceeding is completed and its books closed, the  
2 bankruptcy has ceased to exist and the priorities by which its creditors have  
3 been ordered lose their force. In the instant case, whatever happens to New  
4 Tasemkin in the Fund's pursuit of this claim will have no effect on the  
5 bankruptcy proceeding--that is over and done with and the debtor, Old  
6 Tasemkin, has ceased to be. The Fund's suit, a full two years after the  
7 bankruptcy case has closed, "cannot possibly affect the amount of property  
8 available for distribution to [Old Tasemkin's] creditors; all of [Old  
9 Tasemkin's] property has already been distributed."

10 What the imposition of successor liability would accomplish, and what the  
11 district court objected to, would be a second opportunity for a creditor to  
12 recover on liabilities after coming away from the bankruptcy proceeding  
13 empty handed. But a second chance is precisely the point of successor  
14 liability, and it is not clear why an intervening bankruptcy proceeding, in  
15 particular, should have a *per se* preclusive effect on the creditor's chances.

16 In so holding we do not suggest that a creditor's prior opportunity to satisfy  
17 the claim against the predecessor is irrelevant. In fact, this Circuit and  
18 others have held that a creditor's ability to recover against the predecessor is  
19 a factor of significant weight in deciding whether to allow successor  
20 liability. Instead of being dispositive, however, the availability of relief  
21 from the predecessor is a factor to be considered along with other facts in a  
22 particular case. Here, those facts include the apparent nature of the  
23 acquisition of Old Tasemkin by New Tasemkin--which clearly had the  
24 effect, intended or no, of frustrating unsecured creditors while resurrecting  
25 virtually the identical enterprise.

26 *Tasemkin*, 59 F.3d at 51.

27 The Court finds the same reasoning applicable to the instant matter. Having determined  
28 that California Access is a successor to Paramount and having seen no objection by California  
Access that it had pre-sale knowledge of Plaintiffs' ERISA claims, the Court finds it  
appropriate to enter Judgment in favor of Plaintiffs on their successor liability/ERISA claims..

#### 29 IV. CONCLUSION

30 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,  
31 and the remainder of the record, the Court hereby ORDERS that:

- 32 1) Defendants' Motion for Summary Judgment (Dkt. #107) is DENIED.

- 1 2) Plaintiffs' Cross-Motion for Summary Judgment (Dkts. #111, #118) is GRANTED.
- 2 3) In their Cross-Motion, Plaintiffs ask for "partial" entry of summary judgment on
- 3 their successor liability claim. Dkt. #111 at 23. However, they have not identified
- 4 what, if any, claims or issues remain for trial. Accordingly, the parties shall file a
- 5 Joint Status Report within ten (10) days of the date of this Order informing the
- 6 Court: 1) of any issues that remain to be resolved in this matter; 2) if any issues
- 7 remain for trial how long that trial is expected to be, or 3) whether the Court may
- 8 enter a complete Judgment and close this case.
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11 DATED this 1 day of February 2016.

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13 RICARDO S. MARTINEZ  
14 UNITED STATES DISTRICT JUDGE

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